IN THE

Supreme Court of the United States

October Term, 1965

No. 673

MARTHA CARDONA,

Appellant,

against

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York,

Appellees,

and

LOUIS J. LEFKOWITZ, as Attorney General,

Intervenor-Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

APPELLANT'S BRIEF

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Appellant appeals from a final judgment of the New York State Court of Appeals (3 of the 7 Judges dissenting) made and entered May 27, 1965, amended June 19, 1965 and further amended July 9, 1965.

Opinions Below

The majority memorandum decision and the minority opinion in the New York State Court of Appeals are reported in 16 N. Y. 2d 639 (R. 40-41). The decisions amend-

ing the remittiturs of the Court of Appeals and setting forth the Constitutional questions raised and passed upon by that Court are reported in 16 N. Y. 2d 708 and 827 (R. 42-47).

The memorandum decision of the New York Supreme Court, Special Term Part I is reported in March 17, 1964, New York Law Journal (R. 37-38).

Jurisdiction

This action was brought in the New York State Supreme Court, New York County, to challenge the validity of a series of New York laws under which the right of certain selected classes of citizens to vote in elections is conditioned upon their ability to read and write in the English language.

The judgment of the New York State Court of Appeals was made and entered as above noted. The jurisdiction of the United States Supreme Court to review this judgment by direct appeal is provided for by Title 28, § 1257 (2) of the United States Code.

Probable jurisdiction was noted by order of this Court dated January 24, 1966 (R. 52).

New York Law Involved

New York State Constitution, Article II, § 1 (Appendix, p. 1a).

New York State Election Law, Sections 150, 155, 168 and 201 (Appendix, pp. 1a-8a).

Questions Presented

The questions presented by this appeal are:

1. Whether a native-born United States citizen, literate in the native language of the part of the United States in

which she was born and educated can properly be deprived of her right as a citizen to vote in elections solely because she cannot read or write in English, a language which is to her foreign.

2. Whether the provisions of Article II Section 1 of the New York Constitution and Sections 150, 155, 168 and 201 of the Election Law of the State of New York, as applied to appellant infringe her rights under the 5th, 14th and 15th amendments to the Constitution of the United States, in that such provisions of New York Law unreasonably discriminate between classes of citizens, in that such provisions exempt from all literacy requirements persons who could have qualified to vote although illiterate prior to 1922, in that such provisions exempt from their application entirely persons unable to read and write English because of physical defects, and in that said provisions exempt from all literacy requirements veterans of the Armed Forces, and occupants of veterans' hospitals regardless of whether or not they themselves are veterans, while at the same time denying the right to vote to persons literate in the Spanish language, a language native to the part of the United States in which they were born and in whose United States government schools they were educated.

3. Whether the literacy-in-English provisions of Article II Section 1 of the New York State Constitution, and Sections 150, 155, 168 and 201 of the New York State Election Law as applied to appellant constitute violations of Article IV Sections 2 and 4 and Article VI Section 2 of the Constitution of the United States in that such provisions of New York Law unreasonably and unconstitutionally discriminate against native born citizens of the United States of Puerto Rican birth and deny them rights equal to those accorded to native born citizens of other parts of the United States and in that such provisions violate the United Nations Charter, ratified as a Treaty on August 8,

1945, and the express commitment of the United States to the United Nations in 1953, pursuant to such United Nations Charter.

Statement of the Case

These are the circumstances, as alleged in the Petition, out of which this proceeding arose:

Martha Cardona, the Appellant, is a native-born citizen of the United States. She was born in Puerto Rico then, as now, a part of the United States, whose common language is Spanish (R. 2). She was educated in Puerto Rico in schools supported by the United States Government. The curriculum in those schools is substantially identical to those in other parts of the United States, and the text books used are identical to those in common use in other parts of our country, the only substantial difference arising out of the fact that the lessons and the texts are in the language in common use in the areas involved. In Appellant's case the language used was that common in Puerto Rico—Spanish (R. 3). Since 1948, Appellant has been a resident of New York City. She is married and has three children, all of whom were born in New York City. She is literate in her native language, Spanish. She does not read and write English. She has a general understanding of government and politics, at least equal to that of adult citizens, residents and voters of New York. She is interested in her government and desires to play the proper citizen's role in her government (R. 3). Before taking up residence in New York City, Appellant lived in Puerto Rico where she regularly voted in Gubernatorial, legislative and municipal elections, pursuant to the provisions of 48 U. S. Code, Ch. 4 (R. 3). Appellant is a regular reader of the New York City Spanish-language daily newspapers and periodicals and a regular listener to the broadcasts of the Spanish-language radio stations in New York City, each of which media of communication provide as much or more coverage of government and politics as do most English papers and radio stations (R. 3).

On July 23, 1963, Appellant appeared at the New York City Board of Elections, and asked to be registered and enrolled as a voter, that she presented evidence of her citizenship, age and residence, none of which was questioned or disputed; that the Board of Elections required that Appellant submit to a literacy test in the English language; that Petitioner informed the Board that she was unable to pass such a test in the English language, and requested that she be given a literacy test in her native language; that this the Board of Elections refused to do and rejected Appellant's request for enrollment as a voter upon the sole and exclusive ground that she was unable to pass a literacy test in English a language which to her is foreign (R. 3-4).

The sole basis upon which the Board of Elections rejected Appellant's demand that she be enrolled as a voter is the provisions of Article II, Sec. 1 of the New York Constitution (and the provisions of Sections 150, 162 and 201 of the Election Law, which purportedly carry out the cited provision of the Constitution) which, in part, provides that "after January 1, 1922 no person shall become entitled to vote * * * unless such person is also able, except for physical disability, to write and read English" (R. 4).

Appellees, the New York City Board of Elections, in its Answer did not oppose the granting of the relief demanded by petitioner, but (R. 13-14) expressly left that task to the New York State Attorney General, who intervened and served an Answer asserting objections in point of law (R. 15-18).

Appellant challenged the validity of the cited provisions of the New York Constitution and Election Law, particularly insofar as they purport to apply to United States citizens of Puerto Rican birth, literate in the language of Puerto Rico, and not literate in the English language (R. 4).

Briefly stated, the principal grounds upon which Appellant asserts the unconstitutionality of the English-literacy test provisions of the New York State Constitution and the provisions of the Election Law which purport to carry them out are (R. 4-12).

1. The constitutional and statutory provisions contain a "grandfather clause" exception in favor of qualified citizens as of the effective date of the adoption of the constitutional provision and of certain other classes which, by unreasonably discriminating against others, infects the entire provision.

2. The statutory and constitutional provisions contain exceptions in regard to veterans and veterans' dependents and dependents of veterans' dependents and the spouses, parents and children of deceased veterans which by unreasonably discriminating against others, infects the entire pattern of literacy requirements.

3. The literacy-test provisions are unrelated, either in purpose or effect, to determining the ability of citizens competently to exercise the elective franchise and are designed *not* to assure qualification to vote but disqualification.

4. By depriving of their franchise United States born citizens fully literate in the language native to the part of the United States in which they were born, upon the sole ground that they are not literate in the language native to another part of the United States, such English-literacy test provisions deprive those citizens of the equal protection, the rights, privileges and immunities guaranteed to all citizens of the United States and defeat the principal of reciprocal rights and immunities which lies at the base of those guarantees.

5. The English-literacy test requirements insofar as they preclude Puerto Rican-born United States citizens

from exercising their franchise constitute an unlawful discrimination based upon race.

6. The English-literacy test requirements insofar as they are applied to Puerto Rican-born citizens, violate the Treaty of Paris and violate United States Statutes which carry out that Treaty, and are in conflict with the Congress-enacted Constitution of Puerto Rico which forbids the application of literacy tests to Puerto Rico-born citizens.

7. The English-literacy test requirements are in direct conflict with the formal commitment made by the United States to the United Nations in regard to the political rights of Puerto Rico-born United States citizens.

The factual basis upon which these grounds are asserted are set forth in detail in the petition (R. 4-12).

Since the dismissal of the petition was on the law alone, the complete accuracy of the factual allegations must be assumed for the purpose of this appeal.

The New York Supreme Court at Special Term, denied petitioner's application and dismissed the petition as a matter of law, with a short opinion, citing a prior decision of New York Courts in *Camacho* v. *Rogers,* 7 N. Y. 2d 762 and a decision by a three-judge Court in *Camacho* v. *Rogers,* 199 F. Supp. 155 (R. 37-38).

The Court of Appeals of New York, to which a direct appeal was taken pursuant to N. Y. C.P.L.R. 5601 (b) 2, affirmed, three of the seven Judges dissenting. The majority decision was expressed in a brief memorandum which merely referred to that Court's decision without opinion in *Camacho* v. *Rogers,* 7 N. Y. 2d 762 (R. 40).

Chief Judge Desmond wrote a dissenting opinion in which he was jointed by Judges Fuld and Burke. That opinion stated, in part (R. 41; 16 N. Y. 2d 708, 710):

"Denial of voting rights to this competent, intelligent and reasonably well-educated and informed native-born American citizen, simply because she is unable to meet New York State's literacy-in-English requirements, is unreasonable and unconstitutionally discriminatory, particularly since by reason of the effective date of the literacy amendment to section 1 of article II of the State Constitution and the exceptions in section 168 of the Election Law, many persons are allowed to vote regardless of literacy."

Summary of Argument

The New York constitutional and statutory provisions imposing a literacy-in-English qualification as a condition for the exercise of the elective franchise unconstitutionally discriminates against native-born United States citizens of Puerto Rican birth, in that they effectively deprive them of a basic right of citizenship upon the basis of circumstances which inhere in them by reason of their place of birth upon American soil. Spanish is just as American a language as is English, and to require of an American citizen that he read and write English, although he is born and educated in a part of America in which Spanish is the native language is no more valid than it would be to require of a native born American citizen that he read and write Spanish although the place of his birth and education was one in which English was the common language.

But, entirely apart from this, the pattern of the literacy-in-English of laws of New York is shot through with exceptions, under which pre-1922 citizens resident in New York, disabled citizens, armed forces veterans, relatives of armed forces veterans confined to veterans' hospitals and other institutions and such persons who are "with them" are exempted from all literacy requirements while at the same time persons fully literate in a language other than English who do not come within that variety of cate-

gories are required to demonstrate an ability to read and write in English as a prerequisite for the exercise by them of the elective franchise. This too works a clearly unconstitutional discrimination which infects the entire pattern of the literacy-in-English laws of New York and renders them unconstitutional. Moreover, the pattern of literacy-in-English laws of New York State is offensive to the whole concept of national citizenship and, in addition, insofar as it applies to United States born citizens of Puerto Rican birth, violates both the United Nations Charter and the express commitment of the United States Government in regard to the status of Puerto Rican-born United States citizens made to the United Nations for the purpose of exempting it from certain requirements of the United Nations in regard to control, inspection and reporting applicable to colonial possessions, and for that reason too is unconstitutional.

POINT I

The exemption from literacy test requirements of pre-1922 citizens, physically disabled citizens and a host of other classes of citizens on bases utterly unrelated to voter qualification infects the whole pattern of New York's literacy-in-English laws and renders them totally invalid.

In *Carrington* v. *Rash*, 85 S. Ct. 775 (1965) this Court (one of the Justices dissenting) struck down as invalid under the 14th Amendment a provision of the Texas Constitution which denied the elective franchise to residents of Texas who became such while on military duty, so long as they remained members of the armed forces. This Court held that this discriminatory provision established a classification bearing no rational or valid relation to the proper exercise of voting rights.

The entire pattern of New York's literacy-in-English laws, as we shall now demonstrate, is such as to by comparison make the invalidated Texas Constitutional provision a model of rationality and discretion: for the New York literacy-in-English laws establish a barrier to the exercise of the elective franchise in selective cases and, in a series of other selective cases, provide exemptions from those provisions based upon no rational differentiation having the slightest connection with the proper exercise of the elective franchise.

Under New York law, while citizens literate in the native language of the part of the United States in which they were born are denied the right to vote, the following classes of persons, although they be totally illiterate in any language, are exempt from all literacy requirements:

1) Pre-1922 New York citizens;

2) Physically disabled persons;

3) Honorably discharged veterans;

4) Armed Forces veteran inmates in veterans hospitals;

5) Spouses, parents and children of veterans (whether living or dead) in veterans hospitals; and

6) Spouses, parents and children of the class covered by "5" above, if they are "with such inmates".

This, as Chief Judge Desmond of the New York Court of Appeals (Burke and Fuld, JJ, concurring) aptly observed in the dissenting opinion below (R. 41):

> ". . . is unreasonable and unconstitutionally discriminatory."

It is submitted that the *Carrington* decision applies *a fortiori* here. And, since the pattern of New York's

literacy laws is shot through with discrimination, it must fall in its entirety.

We turn now to a detailed examination of New York's literacy laws.

A

The operative provision of the New York Constitution (Art. II, § 1; App., p. 1a) limits the requirements of literacy to citizens who reach the stage at which they become qualified to vote "after January 1, 1922," and, in addition, exempts from the literacy requirements persons whose illiteracy stems from "physical" disability. Thus, a person totally illiterate is permitted to register and vote if he was a citizen and resident of New York State prior to January 1, 1922, even though such persons have never before voted in an election (see *Matter of Ferayorni* v. *Walter*, 202 N. Y. S. 91, 121 Misc. 602 and New York Election Law §169). Thus, the constitutional provision referred to is infected by an invalid "grandfather clause" which effects an unwarranted discrimination against non-literate persons who achieved ordinary voting status after January 1, 1922.

The purpose of the exemption provision is plain; it was to assure the continuance of voting rights to native-born New Yorkers and other then-qualified residents regardless of whether or not they were literate and to deny voting rights to later-arriving New York residents and to persons later-obtaining American citizenship. Under the exemption an illiterate native-born New Yorker, of voting age in 1921, who had never voted before, would be allowed to vote, but a similarly situated United States-born citizen migrating to New York from Alabama or Mississippi after January 1, 1922 would not be allowed to vote, and neither would a native-born United States citizen migrating from Puerto Rico, after January 1, 1922, even though literate in the language of his place of birth, or a United States citizen, literate in the language of his place of birth, naturalized after January 1, 1922. There is obviously no rational

basis for such discrimination. A citizen who had that status in January, 1922 is obviously no more competent to play a full citizenship role than a citizen who achieved that status in 1942 or 1962. Yet, under the cited provisions of the Constitution, a totally illiterate person who had reached the age of 21 before January 1, 1922 is permitted to vote, while his neighbor, who is fully literate in half a dozen languages other than English is denied the right to vote, merely because he was not 21 years old, citizen and resident of New York on January 1, 1922. Such a distinction is irrational and unsupportable as a matter of law.

Grandfather clauses, indistinguishable in principle from the one here under review have been repeatedly struck down by this Court. See, *e.g. Guinn* v. *U. S.*, 238 U. S. 347; *Lassiter* v. *Northampton Election Board*, 360 U. S. 45. See also, *Lassiter* v. *Taylor*, 152 F. Supp. 295.

The provisions of law embodying the literacy test are manifestly not related to determining the ability of a citizen to exercise the elective franchise, neither in their purpose nor in their effect. As recent extensive United States Senate Hearings have shown (*Literacy Tests and Voter Requirements in Federal and State Elections*, Hearings before Subcommittee on Constitutional Rights of Judiciary Committee, 87th Congress, 2nd Session I 1962), the history of these provisions and provisions similar to them in the laws of other States, reveals that their purpose is to exclude certain groups of citizens from taking part in elections and to reduce them to a second-class status. The terms of the provisions referred to show that, in their effect, they make irrational distinctions between citizens of differing racial background and serve not to assure qualification to vote but disqualification. Such, too, is the history of New York's literacy laws. See *Debate on the Literacy Test*, N. Y. Times, Section 7, p. 2, Oct. 23, 1921; 3 Rev. Rec. N. Y. State Constitutional Convention 1915, pp. 3021-3055.

B

The irrational, discriminatory and totally invalid character of New York's literacy requirement is further revealed by numerous exceptions which have been carved out, in addition to those discussed above.

Section 150 of the New York State Election Law (App., pp. 1a-2a) prescribes the qualifications which a voter must possess. It provides, among other matters:

> "In the case of a person who became entitled to vote in this state by attaining majority, by naturalization or otherwise after January first, nineteen hundred twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English."

The literacy-in-English provision thus starts out with two exceptions: (1) Pre-1922 illiterates, and (2) persons suffering from a physical disability (App., p. 1a); both of which factors are totally unrelated to the proper qualification of citizens to intelligently exercise the elective franchise. But the discrimination does not stop there. By other sections of the Election Law the literacy provisions are rendered inapplciable to a host of other persons: Thus § 168 of the Election Law (App., pp. 5a-7a) which purports to prescribe the means by which "proof of literacy" is to be established, provides, for example, that (subd. 6) "[p]resentation of a certificate of an honorable discharge . . . shall constitute conclusive proof of his or her literacy." It seems to manifest for argument that a citizen's qualification to intelligently exercise the elective franchise is in actuality irrelevant to his status as an "honorably discharged" veteran of the armed forces, since it is not a prerequisite for induction into the armed forces, or for honorable discharge from the armed forces that a person be literate in English or in any other language.

Section 155 of the New York Election Law (App., pp. 2a-5a) carries the discrimination several steps further along

the road. Thus: (1) A veteran of the armed forces who is confined to a veterans hospital is entitled to be registered for an absentee ballot. In such circumstances, that statute provides (subd. 5) the mere "signature" of such a veteran absentee voter" shall constitute *conclusive* proof of his or her literacy." (2) Under Subd. 11 of the same section, its "privileges" are "extended to the spouses, parents and children of honorably discharged members of the armed forces of the United States, whether living or dead" where such persons are inmates of "veterans bureau hospitals or federal or state institutions providing care for such persons". (3) Under the same subdivision 11 of the cited section, its benefits are extended beyond the list of such classes of persons to "the spouses, parents and children" of such persons who are "with such inmates".

In each of the instances referred to in the cited provisions of § 155, the mere "signing" by the applicant of an application for an absentee ballot (Subd. 12, b):

> "shall constitute *conclusive* proof of his or her literacy" (App., pp. 4a-5a).

And, of course, "conclusive proof" even more than a "conclusive presumption" precludes either evidence or a finding to the contrary. See *Wigmore on Evidence* (3 Ed.), § 2492.

Manifestly, the circumstances that a citizen is a veteran or related to a veteran, or is an inmate of veterans hospital or is staying "with such inmate" is irrelevant to that person's proper qualification for exercising the elective franchise.

Thus, a person totally illiterate in any language is qualified to vote under New York, if he is a veteran or, whether or not he is a veteran, if he is confined to a Veterans' institution, or is "with" any inmate of a veteran institution, yet any other non-literate person, or even a person fully literate in the language of his place of

birth in the United States is deprived of his right to vote unless he is also literate in the language common to other parts of the United States.

C

Finally, in the light of the present status of the arts of communication, a literacy test is particularly lacking in justification. For, although in the 1920's when the literacy test provision was incorporated into the New York Constitution, reading matter was the principal means of mass communication, such is far from the fact today. In contrast, at the present time radio and television have taken over by far the largest share of the area of mass communication, particularly in the field of government and politics. See *e.g.* Christenson & McWilliams-*Voice of the People* (1962), pp. 39-53; Tyler, *Television and Radio* (1961), *of Mass Communication* (1954); Evans, *The Eighth Art* (1962), pp. 39-53; Tyler, *Television and Radio* (1961), pp. 109, *et seq.*

As the record in this case (R. 3) and as the record in the two other related cases now before this Court (see Transcript and Record in Nos. 847 and 877 at pp. 50-64) demonstrate, Spanish-speaking United States citizens have and use all the resources of modern mass-communication media and are at least as well informed upon matters relevant to the proper exercise of the franchise as are citizens literate in English.

In origin, purpose, operation and effect the challenged provisions of law are discriminatory and void. They purport to set up distinctions which do not rise to the quality of differences. The classifications which the literacy laws purport to establish are totally alien to any valid purpose related to voter-qualification. They are direct violations of the Equal Protection clause of the 14th Amendment. Upon this ground alone the English literacy test requirements of New York State Constitution Article II § 1 and Election Law §§ 150 and 168 are invalid.

POINT II

In violation of the 14th and 15th Amendments, the English literacy test requirements invalidly deprive native-born U. S. Citizens of Puerto Rican origin, whose native language is Spanish, of their basic citizenship rights.

We turn now to a consideration of the validity under the 14th and 15th Amendments of the cited provisions of the New York State Constitution and the provisions of the New York Election Law as they apply to American-born citizens of Puerto Rican birth, literate in their own language and not literate in the English language.

At the outset, attention is called to a commonly overlooked but significant distinction which exists between the United States citizens of Puerto Rican origin and foreign-born foreign language groups. The Puerto Rican is no more foreign-born than is a person born in New York or Ohio. He is a native American, and he can no more shed his citizenship (except by attaining citizenship in another nation) than he can shed his own skin. The language he speaks is just as American as the language spoken by the residents of New York or Ohio. Indeed, it was earlier in common use in our land than English. The Puerto Rican's culture is as American as the New Yorker's or the Ohioan's. Like the Spanish-speaking Americans of Texas and New Mexico, and like the French-speaking natives of Louisiana (see Transcript of Record in Nos. 847 and 877 at pp. 64-71), all share a common heritage, whose special values lie in their difference as well as in their similarities and in the contributions each makes to the multitude of cultures of which the American culture is an amalgam.

Nor need we be diverted from the direct and clear questions presented here by consideration of whether the Commonwealth of Puerto Rico is a State or a Territory or something between the two. (See *Documents on the*

Constitutional History of Puerto Rico (2 Ed.), Wash. D. C. 1964, pp. 217-331). Our only concern is with the political rights of native-born U. S. citizens.

And upon this aspect of the case, we address ourselves to the basic provision of the Federal Constitution, which, we submit, controls here; the first section of the 14th Amendment:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws."

That appellant is a born citizen of the United States is undisputed; that it therefore follows that she has by her residence attained citizenship of New York is unquestioned. There remains only the question whether the challenged provisions of the New York Constitution (and the provisions of the Election Law which purport to carry it out) deprive her of her New York State citizenship or constitute laws which "abridge" her "privileges or immunities," as a citizen of the United States or deny her "equal protection of the laws."

It is submitted that the question need only be asked to be answered. For clearly, appellant cannot properly call herself a "citizen" of New York, if a basic right of citizenship—the right to vote, is denied to her, particularly when the only reason for that denial is her natural state as a Puerto Rican born citizen whose native language differs from that commonly prevalent in New York.

Can it be said that the "law" pursuant to which this deprivation of citizenship rights is denied appellant does not "abridge" her "privileges and immunities" and does not deny her "equal protection of the laws"? Surely not. Consider: non-literacy in the English language is an

inherent quality of United States citizens of Puerto Rican birth, as much as is the quality of their skin color, their culture, their "race" or their physical characteristics. Requiring that native-born United States citizens of Puerto Rican origin be able to read and write English before attaining citizenship rights in New York is the equivalent of requiring that they be born in an English-language part of the United States as a condition of attaining New York state citizenship. Both are clearly offensive to the concept of National citizenship, which is basic in our form of government. If by virtue of an inherent quality, tied to their very nature, and resting upon the part of United States territory from which they came, United States citizens can be deprived of their citizenship rights, then the cited provision of the 14th Amendment is rendered meaningless.

This Court aptly noted that Puerto Rican-born United States citizens are entitled to "exact equality with citizens from the American homeland", *Balzac* v. *Commonwealth of Puerto Rico*, 258 U. S. 298, 311 (1921). The right to vote is a basic right of all citizens of our Nation. Without that basic right no person can claim to be in possession of full and equal citizenship in a democracy or under a republican form of government.

As this Court held in *Westbery* v. *Sanders*, 84 S. Ct. 526, 545 (1964), and repeated in *Reynolds* v. *Sims*, 84 S. Ct. 1362, 1380 (1964):

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory, if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right."

Appellant pays taxes for the support of the government. She stands ready, as all of her class, to serve her

country in war. In the service of the army of the United States Americans of Puerto Rican origin have not been asked to take literacy tests in English—and Puerto Ricans have fallen before enemy guns in three wars in which our country was in jeopardy. Appellant is subject to the laws of her country. She sustains all of the duties and obligations of citizenship, yet she has been denied the one right of citizenship which is greater than all others: the right to join in choosing who shall govern her. The rights of citizens of the United States must be reciprocal or discrimination necessarily results. If New York State can deny the right to vote to a Spanish-speaking native-born citizen of New Mexico until he learns what to him is a foreign language, English, then the State of New Mexico can return the compliment and deny the right to vote to native-born New York citizens until they learn to speak what to them is a foreign language, Spanish. Obviously, such a state of affairs would flout the basic concepts of national citizenship upon which our Nation was founded. Under the Constitution of the Commonwealth of Puerto Rico, adopted by the Puerto Rico on March 3, 1952, and amended and ratified by the United States Congress on July 3, 1952 (30 Stat. 1759) not only may an English-speaking New York citizen who moves to Puerto Rico vote in elections held there, notwithstanding his inability to read or write the native language of Puerto Rico, but the Constitution of Puerto Rico (Art. III, § 5, Art. VI, § 4), guarantees that he may be elected to office notwithstanding that he is literate only in English.

In contrast to these provisions, the cited provisions of New York law operate to automatically deprive appellant of her basic rights of United States citizenship upon her achieving New York citizenship: In Puerto Rico appellant was a duly qualified voter and as such voted in regular and special elections; by moving to New York and becoming a citizen of New York, it has, in effect been held by appellees, appellant forfeits her basic citizenship rights. It is submitted that this is inconsistent with reason and law.

The United States citizenship which appellant's birth in Puerto Rico endowed her with, was not a limited privilege to enjoy only such of those rights of citizenship as various State governments might see fit to accord to her: it is an unqualified right of citizenship and it includes the right to live in, and automatically attain full citizenship in every State of the Union. If by the accident of her birth in a part of our Nation in which the common language is Spanish appellant can be deprived of her right to vote for President, Senator, Congressman, Legislator, Mayor and Councilman in the City where she lives, she is relegated to a "second-class citizenship" which, as this Court said recently, our Constitution prohibits (*Schneider* v. *Rusk*, 84 S. Ct. 1187, 1190 [1964]).

POINT III

By a succession of federal statutes and by its enactment of the Constitution of Puerto Rico Congress has granted full United States citizenship to persons born in Puerto Rico and precluded the application to them of literacy tests. An English-literacy test requirement imposed upon the Spanish-speaking Puerto Ricans is totally inconsistent with such a grant of full citizenship and with the express policy of Congress.

Entirely apart from what we have already said, there are further considerations which compel the conclusion that the English-literacy test requirements of New York law cannot validly be applied to appellant and other native-born United States citizens of Puerto Rican origin.

Puerto Rico was incorporated into the territory of the United States pursuant to the Treaty of Paris of 1898 (30 Stat. 1759). In the Jones Act of 1917 (Public Law 600) and in later statutes (See, *e.g.*, Nationality Act of 1940, ch. 876, Tit. I, subch. II) Congress expressly accorded full United States citizenship to native-born Puerto Ricans.

They were, in the language of the Jones Act, "declared and shall be deemed and held to be citizens of the United States". In none of those statutes has Congress in any way indicated that the "political rights" of persons born in Puerto Rico shall be dependent upon their ability to read and write English. On the contrary, as this Court, speaking through Chief Justice Taft, said in *Balzac* v. *Puerto Rico*, 285 U. S. 298, 308 (1921), the very purpose of the Jones Act was to permit Puerto Rican-born Americans "to move into the continental United States and becoming residents of any State there to enjoy every right of any other citizen of the United States, civil, social and political".

This purpose was reiterated more recently when Congress explicitly precluded political discrimination against Spanish-speaking, native-born Puerto Ricans by its adoption (66 Stat. 327) of Article VI, section 4 of the Constitution of the Commonwealth of Puerto Rico, which provides:

> "No person shall be deprived of the right to vote because he does not know how to read or write or does not own property."

The complex of Federal statutes enacted pursuant to the Treaty of Paris and the Congressionally approved Constitution of the Commonwealth of Puerto Rico are all, in the respects noted, at variance with the English-language literacy provisions of New York law above referred to, and those provisions of law are invalid as applied to petitioner and to other United States citizens of Puerto Rican birth, under the United States Constitution.

The Congress-approved Constitution of the Commonwealth of Puerto Rico (the authority of which lies in the Treaty of Paris) is both implicitly and explicitly at variance with the English-literacy test requirements of New York law. That Constitution approved by the President and adopted by Congress (66 Stat. 327), closes its preamble as follows:

> "We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges; our loyalty to the principles of the Federal Constitution; the coexistence in Puerto Rico of the two great cultures of the American Hemisphere; our fervor for education; our faith in justice; our devotion to the courageous, industrious and peaceful way of life; our fidelity to individual human values above and beyond social position, racial differences and economic interests; and our hope for a better world based on these principles."

Recognizing that ours is not a single-culture Nation but a fusion of several cultures, principally English and Spanish, Congress has thus declared that both Spanish and English are recognized tongues of our country and our hemisphere. This it has done, not only by providing that public elective office under the Puerto Rico Constitution which it approved shall be open to those of either language, but it has gone further and expressly prohibited the application of literacy tests to citizens born in Puerto Rico as a qualification for voting. Congress has recognized that the full citizenship status of Puerto Rican-born Americans would not be attained if the exercise of those rights were dependent upon a reading and writing knowledge of a language which to the Puerto Rican is foreign.

Upon these grounds, too, the provisions of New York law which preclude appellant from exercising her citizen's right to vote solely upon the ground of her inability to read and write English are void as violative of Article IV, §§ 2 and 4; Article VI, Amendments V, XIV and XV of the United States Constitution.

POINT IV

The United States by a separate commitment to United Nations in regard to its citizens of Puerto Rican origin as well as by its adoption of the U. N. Charter, has undertaken to accord to them full citizenship rights, without regard to their language, and thus precluded the imposition of literacy tests upon them.

In *Curran* v. *City of New York*, 191 N. Y. Misc. 229, affd. 275 N. Y. App. Div. 784, the Court expressly held that the United States and each of the States are bound by the United Nations Charter and by all commitments made by the United States under and pursuant to that Charter. And this leads us to the final and independent argument against the application of the English-literacy test requirements to petitioner and other United States-born citizens of Puerto Rican origin.

We note at the outset that the United Nations Charter is a "multilateral treaty" which was signed and ratified by the President and the Senate pursuant to the Treaty power, embodied in United States Constitution Art. III, § 2, para. 2 (*Curran* v. *City of New York, supra*), and that its preamble requires the United States, as a party, to accord "respect . . . for fundamental freedoms for all without distinction as to race, sex, language or religion" (id.). ". . . [T]hese provisions". Justice Hill observed in the *Curran* case, "are the law of the land."

However, we need not rest there. For, in 1953, the government of the United States formally and expressly committed itself to the United Nations to accord to its citizens of Puerto Rican birth full and complete political rights. This, the United States Government did as part of an elaborate presentation, the purpose of which was to exempt itself from United Nations control over Puerto Rico as "colonial territory" of the United States, pur-

suant to Article 73 (e) of Chapter XI of the United Nations Charter. (*U. S. Participation in the U. N.*, Report by the President to the Congress for the year 1953, pp. 181, *et seq.*). Upon the basis of this commitment, the General Assembly of the United Nations adopted a Resolution declaring Chapter XI of the United Nations Charter inapplicable to Puerto Rico (*id.*).

Addressing itself specially to the political rights accorded to the people of Puerto Rico, the "*Memorandum by the Government of the United States, etc.*" submitted to the United Nations on March 21, 1953, stated that the people of Puerto Rico have had:

> ". . . universal adult suffrage since 1939. There have been no property requirements since 1906 *and the last literacy requirements were removed in 1935.*"

It further noted that full and complete United States citizenship has been enjoyed by the Puerto Rican people since 1917, and that, "the Constitution of the Commonwealth (of Puerto Rico) is similar to that of a State of the Federal Union". It further assured the General Assembly:

> "The people of Puerto Rico continue to be citizens of the United States as well as Puerto Rico and the fundamental provisions of the Constitution of the United States continue to be applicable to Puerto Rico . . . The People of Puerto Rico will participate effectively in their government through universal, secret and equal suffrage, in free and periodic elections in which differing political parties offer candidates, and which are assured freedom from undemocratic practices by the Constitution itself."

The commitment made formally by the Government of the United States to the General Assembly of the United Nations, constitutes, under the United Nations Charter which was duly ratified by the President of the United

States, by and with the advice and consent of the Senate of the United States on August 8, 1945, an exercise of the treaty and foreign relations powers of the Government of the United States pursuant to Article VI of the Constitution of the United States and the United Nations Participation Act (22 U. S. C. §§ 287, *et seq.*), and as such, binds the United States and each State of the Union (*Curran* v. *City of New York, supra*), in the language of Article VI of the Constitution, "any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

The imposition upon United States citizens of Puerto Rican birth of the intolerable and unreasonable condition that in order to exercise their political rights as United States citizens under the commitment aforementioned they must learn a language which to them is foreign, directly violates the essence of their citizenship and effectively cancels out that commitment, in contravention of Article VI of the United States Constitution, the United Nations Participation Act, the Charter of the United Nations, and the formal commitment referred to. If any State is permitted to require that Spanish-speaking citizens of Puerto Rico origin must be English-speaking in order to attain full citizenship, the result would be to nullify their United States citizenship and take away what Congress has granted and what the United States government committed itself to in the United Nations. Consequently, for these reasons, too, the application to appellant of the provisions of New York law referred to, the denial by appellees of her application to register for voting upon the sole ground of her inability to read and write English and their denial of her demand that she be permitted to take a voter's literacy test in her own language, Spanish, are all acts contrary to supervening provisions of the Federal Constitution, law and treaty.

CONCLUSION

There are in New York City alone, more than 400,000 United States citizens of Puerto Rican birth, literate in Spanish but not literate in English. (See Transcript of Record in Nos. 847 and 877 at pp. 14-15.) At the present time, under a curious pattern of discriminatory laws persons so situated are denied the basic right of citizenship, the right to vote. They are denied that right because of factors which inhere in their culture as native-born American citizens and they are thus reduced to a second class citizenship status antipathetic to our basic constitutional doctrines. The appellant here, as the Chief Judge of the New York Court of Appeals (and two of his colleagues) noted, is "a competent, intelligent and reasonably well educated and informed native born American citizen" (R. 41). Yet, she is denied the right to vote merely because she cannot read and write in a language which to her is foreign, while others, totally illiterate are permitted to vote. This, as Chief Judge Desmond observed, is "unreasonable and unconstitutionally discriminatory" (*id.*).

The questions which we present to this Court are neither resolved by or involved in the recently-enacted Voting Rights Law which is the subject of Nos. 847 and 877; they stand separate and independent of that statute. However, in measuring the significance of the question presented by this appeal and in proposing to this Court the answers which they should receive, we submit that it is appropriate to call attention to the historic March 15, 1965 address of the President in support of the Voting Rights Law in which he characterized it as

> "wrong—deadly wrong—to deny any of your fellow Americans the right to vote in this country."

It is to right this "deadly wrong" that we are appealing to this Court.

The order appealed from should be reversed. This Court should order that the petition be granted and appellees New York City Board of Elections be directed to enroll appellant as a duly qualified voter or in the alternative to subject appellant to a literacy test in the Spanish language and, upon passing such test, enroll appellant as a duly qualified voter.

March 10, 1966

Respectfully submitted,

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APPENDIX

New York Laws Involved

A. New York State Constitution, Article II, § 1

§ 1. Every citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state for one year next preceding an election, and for the last four months a resident of the county, city, or village and for the last thirty days a resident of the election district in which he or she may offer his or her vote, shall be entitled to vote at such election in the election district of which he or she shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people . . .

Notwithstanding the foregoing provisions, after January first, one thousand nine hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English.

B. New York State Election Law

I

§ 150. Qualification of voters.

A person is a qualified voter in any election district for the purpose of having his or her name placed on the register if he or she is or will be on the day of the election qualified to vote at the election for which such registration is made. A qualified voter is a citizen who is or will be on the day of election twenty-one years of age, and who has been an inhabitant of the state for one year next preceding the election, and for the last four months a resident of the county, city or village and for the last thirty days a resident of the election district in which he or she offers his or her vote, provided, however, that in any election district in which registration is not required to be personal, no elector who is registered and otherwise qualified to vote at an elec-

tion, shall be deprived of his or her right to vote by reason of his or her removal from one election district to another election district in the same county within the thirty days next preceding the election at which he or she seeks to vote, and every such elector shall be entitled to vote at such election in the election district from which he or she has so removed. If a naturalized citizen, such person must, in addition to the foregoing provisions, have been naturalized at least ninety days prior to the day of election. In the case of a person who became entitled to vote in this state by attaining majority, by naturalization or otherwise after January first, nineteen hundred twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English. A "new voter," within the meaning of this article, is a person who, if he is entitled to vote in this state, shall have become so entitled on or after January first, nineteen hundred twenty-two, and who has not already voted at a general election in the state of New York after making proof of ability to read and write English, in the manner provided in section one hundred sixty-eight.

II

§ 155. VETERANS' ABSENTEE REGISTRATION.

1. A voter other than a registered voter qualified to vote at the ensuing general election, may, if he is an inmate or patient in a veterans' bureau hospital in this state, be registered in the manner herein provided.

2. The board of elections in the county in which a veterans' bureau hospital is located shall appoint, after nomination by the respective county chairmen of the parties which in the preceding gubernatorial election polled the highest and next highest number of votes, one or more bipartisan boards of registration, each composed of two inspectors of election, who shall attend such hospital between the hours of nine o'clock in the morning and five o'clock

in the evening on the seventh Thursday before the general election and, in the event that it be necessary for the completion of their herein described duties, on the seventh Friday before such election and such other days as may be necessary and then and there receive from inmates or patients therein the applications of such of them as desire and are qualified to be registered.

3. Each application shall be made in writing and under oath, administered by a member of such board. Except as herein otherwise provided, it shall be signed by the applicant. If he state that he is unable to sign, such board shall administer to him the oath prescribed by section one hundred sixty-nine and each member thereof shall certify, at the bottom of the application, to the nature of the applicant's disability regarding his inability to sign.

* * *

5. The signature of any new voter applying to be registered in the manner prescribed by this section shall constitute conclusive proof of his or her literacy. If an oath is administered to any new voter because such voter is unable to sign the application, the administering of such oath and the certification by the board, as prescribed in subdivision three of this section, shall constitute conclusive proof of his or her literacy.

* * *

8 . . . c. Where permanent personal registration is in effect, the board of elections shall, in such case, forthwith cause a central registration board to fill out, on behalf of such applicant, a set of registration records, using the information furnished in his application, paste a photostatic copy of the applicant's signature, as the same appears on such application, in each space provided on the registration records for the insertion of the registrant's signature, and insert such registration records in the proper file maintained by it for such purpose. Such registration records

shall be marked or stamped conspicuously with the legend "Hospitalized Veteran" or "Hospitalized Veteran's Relative", as the case may be. If an application for registration under this section or an application for an absentee ballot from a person otherwise entitled to be registered under this section is received and it appears that such applicant or person is already registered under permanent personal registration from the residence address stated on his application, his permanent personal registration records shall likewise be stamped or marked conspicuously with the legend "Hospitalized Veteran" or "Hospitalized Veteran's Relative", as the case may be.

* * *

11. The privileges of this section relating to veterans' absentee registration are hereby extended to the spouses, parents and children of honorably discharged members of the armed forces of the United States, whether living or dead, when such relatives are inmates of veterans' bureau hospitals or federal or state institutions provided for the care of such persons and to the spouses, parents and children of inmates and patients of veterans' bureau hospitals who are with such inmates and patients and for that reason will be absent from the counties of their residence at the time of the next general election and entitled to an absentee ballot under the provisions of subdivisions four and six of section one hundred seventeen, and each of such persons upon application, if otherwise lawfully entitled thereto, shall be registered in the manner provided by this section. All provisions of this section relative to the application for registration and to the powers and duties of boards of election and other election officers also shall apply to the registration of the persons above described.

12. a. In case the veterans' bureau hospital in which any veteran entitled to vote in this state is an inmate or patient, is located outside the state of New York, the signing of such veteran's name to an application for an ab-

sentee ballot pursuant to the provisions of section one hundred seventeen shall constitute personal registration wherever such registration is required.

b. The provisions of paragraph a of this subdivision are hereby extended to the spouse, parent or child of such veteran, accompanying or being with him or her, if a qualified voter and a resident of the same election district; the signing by such spouse, parent or child of his or her name to an application for an absentee ballot pursuant to the provisions of section one hundred seventeen shall constitute personal registration whenever such registration is required.

* * *

III

§ 168. Proof of Literacy and Regulations

1. The board of regents of the state of New York shall make provisions for the giving of literacy tests.

In election districts in which personal registration is required, a certificate of literacy issued to a voter under the rules and regulations of the board of regents of the state of New York to the effect that the voter to whom such certificate is issued is able to read and write English, or is able to read and write English save for physical disability only, and to the extent of such physical disability, which shall be stated in the certificate, shall be received by election inspectors and central and veterans' absentee registration boards as conclusive of such fact, except as hereinafter provided.

In election districts in which personal registration is not required, literacy tests may be given by the election inspectors on election and registration days only.

Literacy tests may be given by central registration boards to applicants for registration by such boards at any time during business hours within the period when central registration is permitted.

Literacy tests may also be given by veterans' absentee registration boards to applicants for registration by

such boards, except in cases where the signing of an application constitutes conclusive proof of literacy as provided in section one hundred fifty-five of this chapter, at any time when such boards are in attendance at a veterans' bureau hospital for the purpose of the registration of qualified inmates or patients therein.

Such election inspectors in election districts in which personal registration is not required or central or veterans' absentee registration boards shall issue and file a certificate of literacy, under the same rules and regulations of the board of regents of the state of New York applying to districts in which personal registration is required, to the effect that the voter to whom such certificate is issued is able to read and write English, or is able to read and write English save for physical disability only, and to the extent of such physical disability, which shall be stated in the certificate, shall be filed by election inspectors and central and veterans' absentee registration boards as conclusive of such fact, except as hereinafter provided.

2. Any such certificate of literacy, when issued, shall bear an individual number and shall be in duplicate. One of such duplicates may be retained by the person to whom it is issued, and the other duplicate shall be the certificate received or filed by the election inspectors or by a central or veterans' absentee registration board, as the case may be. All duplicate certificates so received or filed by such inspectors and boards shall be retained by them and transmitted on the day received to the board of elections of the county, except in the city of New York where they shall be transmitted to the board of elections of such city, and be kept on file by such boards of elections. But a new voter may present as evidence of literacy a certificate or diploma showing that he has completed the work up to and including the sixth grade of an approved elementary school or of an approved higher school in which English is the language of instruction or a certificate or diploma showing

that he has completed the work up to and including the sixth grade in a public school or a private school accredited by the Commonwealth of Puerto Rico in which school instruction is carried on predominantly in the English language or a matriculation card issued by a college or university to a student then at such institution or a certificate or a letter signed by an official of the university or college certifying to such attendance. But the genuineness of the certificate and the identity of the voter shall remain questions of fact to be established to the satisfaction of the election inspectors and subject to challenge, like any other fact relating to the qualification of a voter.

• • •

3. The inability of a voter, save for physical disability only, obvious to the election inspectors to write his name in a register or poll-book, shall be deemed conclusive proof of inability to read and write English, notwithstanding the presentation of proof of literacy as herein provided.

4. Upon registering a voter after receiving proof of literacy, each inspector or the central or veterans' absentee registration board shall make a note upon his register, or upon the registers in case of central or veterans' absentee registration, in the registration remarks column, "proof of literacy presented."

5. A person who has heretofore voted a war ballot pursuant to the law of this state, shall state to the appropriate board the place where and the time when he or she voted and the voting address in New York state used at such time, which statement shall constitute conclusive proof of his or her literacy.

6. Presentation of a certificate of an honorable discharge from any of the armed forces of the United States by a person who was a resident of the state of New York at the time he became a member of the armed forces, and who is entitled to such discharge, shall constitute conclusive proof of his or her literacy.

IV

§ 201. Delivery of Ballot to Voter

1. . . . A person shall not be allowed to vote unless he shall have signed his name or made an identification statement as required by section one hundred ninety-eight. In the case of a new voter, as defined by section one hundred fifty, at a general election or a special election for which voters are required to be registered under the provisions of this chapter, in an election district where registration is not required to be personal, if the words "new voter" were entered opposite his name in the registers, he shall not be allowed to vote unless it appears to the satisfaction of the board of inspectors, by the proof prescribed by section one hundred sixty-eight, that he is able to read and write English, except in the case of such a voter who is shown to be incapacitated therefrom by physical disability only. A new voter, as so defined, at an election for which voters are not required to be registered under the provisions of this chapter shall not be allowed to vote unless it appears to the satisfaction of the election officers, from such sources of information as may be available, that he is able to read and write English, except in the case of such a voter who is shown to be so incapacitated by physical disability only; and for such purpose the election officers may require him to produce a certificate of literacy described in section one hundred sixty-eight.

• • •